

# MEMORANDUM

June 8, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: TRACY SWANN  
Deputy County Counsel  
Public Works Division

RE: Francisco Cruz, et al. v. Star Building Maintenance, Inc., et al.  
LASC Case No. BC 314 210

DATE OF  
INCIDENT: April 22, 2004

AUTHORITY  
REQUESTED: \$27,500

COUNTY  
DEPARTMENT: DEPARTMENT OF BEACHES AND HARBORS

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## CLAIMS BOARD ACTION:



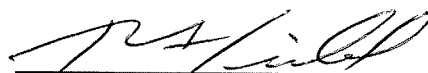
Approve



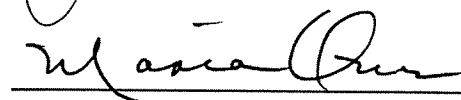
Disapprove



Recommend to Board of  
Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on June 20, 2005

## SUMMARY

This is a recommendation to settle for \$27,500, the declaratory relief lawsuit brought by Francisco Cruz, Veronica Cruz, Javier Cruz, Luis Martinez, Maria Nunez, Carmen Olascoaga, Gustavo Olascoaga, and Jerry Rivera ("Plaintiffs"), former employees of Star Building Maintenance Inc. ("Star Building"), relating to their failure to be paid the County's required living wage while performing services under Star Building's contract with the County. As part of the settlement, Star Building and its subcontractor, United Building Services ("UBS"), also agree not to submit bids or enter into any County contracts for a period of three years.

## LEGAL PRINCIPLES

In certain instances, third-party beneficiaries to a contract may enforce the terms of a contract which are intended to benefit them.

## SUMMARY OF FACTS

On March 5, 2002, the Department of Beaches and Harbors ("Department") awarded Star Building Contract 73927 ("Contract"), a three-year contract for beach restroom cleaning services on certain County-owned or operated beaches.

The Contract required Star Building, among other things, to pay its employees \$9.46 an hour pursuant to the County's Living Wage Program (County Code Chapter 2.201) and to comply with all state and federal employment laws. The Contract also prohibited Star Building from subcontracting or assigning the Contract, in whole or in part, to any third-party without the express written consent of the Director of the Department.

In December 2003, the Department received complaints from several Plaintiffs that they were not being paid the County's living wage, that they had not been paid overtime, and that improper deductions were taken from their checks. They further stated that they were paid by another janitorial service company, UBS, for work performed under the Contract. Although UBS at the time had an existing unrelated janitorial service contract with the County, UBS was not approved by the Department as a subcontractor or assignee of Star Building's Contract. The complaining employees provided the County copies of their check stubs which showed payment at \$7.50 an hour and that payment was issued by UBS.

As a result of these complaints, the Department conducted an audit of Star Building's employment and payroll records for the time period from April 1, 2002 through December 31, 2003. The Department also investigated

UBS' involvement with Star Building. UBS' Accounting Manager admitted to the County that UBS had entered into a subcontract with Star Building and that UBS directly paid Star Building employees for the work performed under the Contract.

In March 2004, the County completed its audit. The audit found that: 1) Star Building subcontracted the Contract to UBS without express authorization from the Director during the audit period; 2) 12 Star Building employees (the Plaintiffs plus four additional individuals) had not been paid the County's living wage; 3) several of the employees were not paid overtime; and 4) Star Building failed to utilize full-time employees in violation of the Living Wage Program. The County notified Star Building of its findings on April 1, 2004. Star Building responded that the problems identified by the County were merely "clerical errors."

On April 21, 2004, the County informed Star Building that \$13,334 was being withheld from Contract payments to Star Building as a result of Star Building's failure to pay the required living wage to its employees. Section 3.32.7.2(a) of the Contract provides that the County may withhold the difference between the amount actually paid to the aggrieved employees and the living wage until the underpayment has been paid by the contractor.

The Department also informed Star Building that the County reserved the right to assess liquidated damages based on Star Building's failure to pay living wages as required by the contract. Thereafter, the County assessed \$40,110 in liquidated damages for that purpose. As a result, payment to Star Building for the months of May and June 2004 were offset by a total of \$53,444 for the living wage violations.

On April 22, 2004, Plaintiffs filed a lawsuit for damages against Star Building and UBS for various employment law violations. On June 8, 2004, the County terminated the Contract with Star Building.

On August 31, 2004, the County notified Star Building of its intent to initiate debarment proceedings. Proceedings began on October 4, 2004. After two days of hearings, the County and Star Building agreed to continue the debarment proceedings to pursue settlement.

On December 16, 2004, Plaintiffs amended their lawsuit to add the County as a defendant to seek declaratory relief. Plaintiffs contend that they were entitled to receive the money withheld and imposed as liquidated damages by the County pursuant to the Star Building Contract on the grounds that they are the intended third-party beneficiaries of the County's Living Wage Program.

On February 18, 2005, the parties participated in mediation and negotiated a global settlement of \$60,000 to be paid to Plaintiffs. Star Building and UBS collectively agreed to pay the Plaintiffs \$32,500. Under the proposed settlement, the County will pay the Plaintiffs \$27,500 to resolve all claims against the County. The County payment consists of the \$13,334 previously withheld from Star Building and \$14,166 of the \$40,110 of liquidated damages assessed against Star Building. The settlement also prohibits Star Building and UBS from submitting bids or entering into any County contracts for three years from the effective date of the settlement agreement.

## DAMAGES

Plaintiffs' first amended complaint seeks a declaration of their third-party beneficiary rights under the Contract in an unspecified amount. Plaintiffs claim that they are entitled to recover, at a minimum, the funds the County withheld from Star Building for violating the Living Wage Program.

## STATUS OF CASE

An Order Showing Cause Re: Dismissal is currently scheduled before the Honorable Judith Chirlin in Department 89 of the Los Angeles County Superior Court for June 26, 2005. Plaintiffs' counsel has requested that the matter be continued to July 11, 2005. The County Contracting Hearing Board was informed of the proposed settlement of the debarment proceedings of Star Building and granted a continuance of the proceedings until June 30, 2005, pending finalization and approval of the settlement.

## EVALUATION

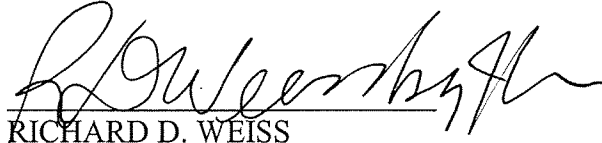
The Department determined through its audit process that both Star Building and UBS violated the Living Wage Program of the Contract and withheld approximately \$13,334 in progress payments and assessed \$40,110 in liquidated damages due to that non-compliance.

A judge or jury could find that Plaintiffs are the third party beneficiaries under the Contract. A reasonable settlement at this time will avoid further costs associated with defending the Plaintiffs' lawsuit and costs associated with completing the debarment proceedings.

The whereabouts of the four remaining employees of Star Building that failed to receive living wage payments as determined by the Department's audit are not known, and no claim has been filed or other legal action has been commenced against the County on their behalf.

Accordingly, we recommend that the County pay \$27,500 to the Plaintiffs.  
The Department concurs with this recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read 'RD Weiss', written over a horizontal line.

RICHARD D. WEISS  
Assistant County Counsel  
Public Works Division

RDW:TS:am